

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

| | | |
|---------------------------|---|---------------------|
| United States of America, |) | File No. 21-CR-108 |
| |) | (PAM/TNL) |
| Plaintiff, |) | |
| |) | |
| vs. |) | St. Paul, Minnesota |
| |) | May 7, 2021 |
| (2) Tou Thao, |) | 8:06 a.m. |
| (3) J. Alexander Kueng, |) | |
| (4) Thomas Kiernan Lane, |) | |
| |) | |
| Defendants. |) | |

BEFORE THE HONORABLE ELIZABETH COWAN WRIGHT
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

(INITIAL APPEARANCES)

Proceedings reported by court reporter; transcript
produced by computer.

APPEARANCES (Via Zoom) :

For the Plaintiff: U.S. Attorney's Office
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SAMANTHA TREPEL, ESQ.
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For Defendant Tou Thao: Robert M. Paule, PA
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For Defendant
J. Alexander Kueng: Plunkett Law Office
THOMAS C. PLUNKETT, ESQ.
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For Defendant Thomas
Kiernan Lane: Earl Gray Defense
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Court Reporter: LORI A. SIMPSON, RMR-CRR
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P R O C E E D I N G S

IN OPEN COURT

(VIA ZOOM)

(Defendants present)

THE COURT: Good morning. This is the United States District Court for the District of Minnesota, and we are here today for initial appearances in Case No. 21-CR-108 (PAM/TNL). I am Magistrate Judge Wright.

We are proceeding by video today in view of the COVID-19 pandemic pursuant to the Coronavirus Aid, Relief, and Economic Security Act, which permits the use of video conferencing for initial appearances under Rule 5 and pursuant to District of Minnesota General Order 27.

As a reminder to all lawyers, parties, media, and members of the public who may be observing, pursuant to Rule 53 of the Federal Rules of Criminal Procedure, the taking of photographs or the broadcasting of these proceedings is strictly prohibited.

Moreover, pursuant to amended General Order No. 15, any photographing, recording, and rebroadcasting of any part of this hearing is strictly prohibited and violation of this prohibition may result in sanctions, including removal of media credentials, restricted entry to future proceedings, and any other sanctions deemed necessary by the Court.

1 With that, I will begin by asking attorneys to
2 make their appearances, beginning with the attorneys for the
3 United States.

4 MR. FOLK: Good morning, Your Honor. Anders Folk
5 and Sam Trepel on behalf of the United States.

6 THE COURT: All right. Good morning, Mr. Folk and
7 Ms. Trepel.

8 MR. FOLK: Good morning.

9 THE COURT: I will now ask the attorney for
10 Mr. Thao to make his appearance.

11 MR. PAULE: Good morning, Your Honor. Robert
12 Paule and Natalie Paule on behalf of Mr. Thao, who is
13 present, Your Honor. Good morning.

14 THE COURT: Good morning.

15 And then the attorney for Mr. Kueng?

16 MR. PLUNKETT: Good morning, Your Honor. Thomas
17 Plunkett on behalf of Mr. Kueng, who is present with me.

18 THE COURT: Okay. Good morning to both of you.

19 And then, finally, the attorney for Mr. Lane?

20 MR. GRAY: Good morning, Your Honor. Earl Gray
21 representing Mr. Lane, who is present and seated in back of
22 me.

23 THE COURT: Okay. Thank you.

24 Now, we are holding the proceeding by video today.

25 So, first of all, I want to ask you all to let me know

1 immediately if any of you are having difficulty hearing or
2 seeing what's going on so that we can get any IT issues
3 sorted out.

4 I also need to confirm with each of the defendants
5 individually that they understand that they have a right to
6 an in-person initial appearance and confirm that he is
7 consenting -- or I should say whether he is consenting to
8 appear by video today instead of in person.

9 So I will just go around to each of you
10 individually and check in, and I'll begin with Mr. Thao.

11 Mr. Thao, do you understand that you have the
12 right to have an in-person initial appearance today?

13 DEFENDANT THAO: Yes, ma'am.

14 THE COURT: Okay. And although we're here by
15 video today, do you understand that the choice is yours to
16 decide if you want to go forward by video today or if you
17 want to have an in-person hearing?

18 DEFENDANT THAO: Yes, ma'am.

19 THE COURT: And are you agreeing now to hold your
20 initial appearance by video today?

21 DEFENDANT THAO: Yes, ma'am.

22 THE COURT: Okay. Thank you, Mr. Thao.

23 Let me now turn to Mr. Kueng, and I will have the
24 same questions for you.

25 First of all, Mr. Kueng, do you understand that

1 you have the right to an in-person initial appearance today?

2 DEFENDANT KUENG: I do, Your Honor.

3 THE COURT: Okay. And although, as I said, we're
4 here by video, the choice is yours to decide whether you
5 want to go forward by video or in person today. Do you
6 understand that?

7 DEFENDANT KUENG: I do, Your Honor.

8 THE COURT: And are you agreeing to go forward by
9 video today?

10 DEFENDANT KUENG: Yes, Your Honor.

11 THE COURT: Okay. Thank you, Mr. Kueng.

12 And then, finally, Mr. Lane, same questions for
13 you.

14 First of all, do you understand that you have the
15 right to an in-person hearing today?

16 DEFENDANT LANE: I do, Your Honor.

17 THE COURT: And specifically do you understand
18 that you get to make the choice whether we go forward by
19 video or in person today?

20 DEFENDANT LANE: Yes, I do, Your Honor.

21 THE COURT: And are you agreeing to go forward by
22 video today?

23 DEFENDANT LANE: I am, Your Honor.

24 THE COURT: Okay. Thank you, Mr. Lane.

25 Mr. Folk, is there any objection from the

1 government to proceeding by video today?

2 MR. FOLK: No, Your Honor. Thank you.

3 THE COURT: Okay. Thank you.

4 And let me check in, Mr. Paule, any objections or
5 concerns that you want to raise on behalf of your client
6 proceeding by video?

7 MR. PAULE: No, Your Honor. Thank you.

8 THE COURT: Thank you.

9 Mr. Plunkett, any objections or concerns?

10 MR. PLUNKETT: No, Your Honor.

11 THE COURT: And, finally, Mr. Gray, any objections
12 or concerns?

13 MR. GRAY: No, Your Honor.

14 THE COURT: Okay. Thank you all. So with the
15 consent of all three defendants and in the absence of
16 objections, we will proceed by video today.

17 The purpose of the initial appearance is to, first
18 of all, advise the defendants of their rights under the laws
19 and Constitution of the United States. Second, although I
20 understand each of the defendants is here with private
21 counsel today, I will confirm with them that they understand
22 their right to counsel and whether they want to proceed with
23 their private lawyers or if they want to obtain the services
24 of the Federal Defender. I will also confirm with each of
25 the defendants that he understands why he is before the

1 Court today. We will have a discussion about release or
2 detention pending further proceedings. And then, finally,
3 to the extent there are additional follow-up items to take
4 care of following this proceeding, I will advise the parties
5 and the lawyers of those obligations.

6 So let me first advise the defendants of their
7 rights, and then I'm going to ask each of you individually
8 if you heard and understand them. So please do listen
9 carefully because, of course, these are important.

10 You have the right to remain silent and not to
11 answer the questions of any law enforcement officer
12 whatsoever. You can give up your right to remain silent and
13 answer questions if you wish to. The choice is yours. If
14 you do give up your right to remain silent and if you do
15 answer questions, anything you say can and will be used
16 against you in court.

17 You also have the right to be represented by an
18 attorney whenever you are being questioned; and if you
19 cannot afford an attorney, the Court will appoint one to
20 represent you free of charge.

21 Finally, you have these rights at all times and
22 you can assert them at any time.

23 Before I turn to the individual defendants, I'm
24 going to provide the government with the *Brady* Rule 5(f)
25 warning, an order that is required by Congress. As required

1 by Rule 5(f) of the Rules of Criminal Procedure, the United
2 States is ordered to disclose to the defendants all
3 exculpatory evidence, that is, evidence that favors the
4 defendant or casts doubt upon the United States' case, as
5 required by *Brady vs. Maryland* and its progeny. Not doing
6 so in a timely manner may result in consequences, including,
7 but not limited to, exclusion of evidence, adverse jury
8 instructions, dismissal of charges, contempt proceedings,
9 disciplinary action, or sanctions by the Court.

10 Mr. Folk, does the government understand its
11 obligations and my order?

12 MR. FOLK: Yes, Your Honor.

13 THE COURT: Thank you. Mr. Folk, is there a
14 motion to unseal?

15 MR. FOLK: Yes, Your Honor. The government would
16 move to unseal CR-21-108 as well as 21-CR-109.

17 THE COURT: Thank you, Mr. Folk.

18 Is there any objection, Mr. Paule, to the motion
19 to unseal?

20 MR. PAULE: No, Your Honor.

21 THE COURT: Okay. Mr. Plunkett, any objection?

22 MR. PLUNKETT: No, Your Honor.

23 THE COURT: Thank you. And, Mr. Gray, any
24 objection?

25 MR. GRAY: No, Your Honor.

1 THE COURT: All right. Thank you all. The
2 government's motion to unseal Case 21-CR-108 and
3 Case 21-CR-109 is granted and those cases will be unsealed.

4 Let me now proceed with each defendant
5 individually, beginning with Mr. Thao.

6 Mr. Thao, if you could please state your full name
7 for the record and spell your last name.

8 DEFENDANT THAO: First name Tou. Last name Thao,
9 T-h-a-o.

10 THE COURT: Okay. Thank you. And how old are
11 you, sir?

12 DEFENDANT THAO: 35.

13 THE COURT: Okay. And I read and advised the
14 rights to all defendants a few minutes ago. Were you able
15 to hear all of those clearly?

16 DEFENDANT THAO: I did, Your Honor.

17 THE COURT: Okay. And do you understand them?

18 DEFENDANT THAO: Yes, Your Honor.

19 THE COURT: Do you understand that you can claim
20 them at any time?

21 DEFENDANT THAO: Yes, Your Honor.

22 THE COURT: Okay. Now, you are here today,
23 Mr. Thao, because a grand jury has returned an Indictment
24 dated May 6, 2021. I want to make sure that you understand
25 the charges that you face in that Indictment. Have you

1 reviewed the Indictment?

2 DEFENDANT THAO: Yes, Your Honor.

3 THE COURT: Okay. And do you understand the
4 charges that you face?

5 DEFENDANT THAO: Yes, Your Honor.

6 THE COURT: Okay. Now let's talk about your legal
7 representation. I see that you have Mr. Paule here with you
8 today. And, as I said, you are entitled to an attorney in
9 this case; and if you can't afford one, the Court will
10 appoint one to represent you at no cost.

11 Do you wish to consider -- excuse me. Do you wish
12 to continue with Mr. Paule's representation or do you want
13 the Court to consider appointing the Federal Defender to
14 represent you?

15 DEFENDANT THAO: I will stay with Mr. Paule,
16 sir -- excuse me, ma'am.

17 THE COURT: That's fine. Okay. Mr. Thao, I have
18 made a note of that.

19 All right. Let's turn to the question of
20 detention. Mr. Folk, is the government seeking detention of
21 Mr. Thao?

22 MR. FOLK: It is not, Your Honor. We are
23 comfortable with the conditions that are outlined in the
24 Pretrial Services report.

25 THE COURT: Okay. All right. Thank you,

1 Mr. Folk.

2 So, Mr. Thao, the government is not seeking to
3 detain you pending trial. And the United States Probation
4 and Pretrial Services Office has prepared some draft
5 conditions of release for you, which I have reviewed, and I
6 do find that those conditions will reasonably assure your
7 appearance at future proceedings as required and the safety
8 of the community. So you will be released on those
9 conditions while your case is pending. I'm going to just
10 briefly summarize those conditions.

11 First of all, you need to appear for all court
12 proceedings, of course.

13 If you are convicted, you must surrender to serve
14 a sentence that the Court may impose.

15 You will be required to execute a \$25,000
16 unsecured bond.

17 You may not violate any federal, state, or local
18 law.

19 And then, finally, you must submit to and
20 cooperate with a Pretrial Services interview, which will be
21 completed on or before May 11, 2021.

22 Now, Mr. Thao, you will be getting these
23 conditions in writing after this proceeding, but I want to
24 check and see, do you have any questions about your
25 conditions right now?

1 DEFENDANT THAO: I do not, Your Honor.

2 THE COURT: Okay. And, Mr. Thao, there could be
3 serious penalties and sanctions if you do not comply with
4 those conditions, including a revocation of your release and
5 bond, imprisonment, or a fine. Do you understand that there
6 could be very serious consequences if you don't comply with
7 those conditions?

8 DEFENDANT THAO: I do, Your Honor.

9 THE COURT: Okay. All right. With that, I will
10 execute the appropriate paperwork after this hearing and it
11 will be provided to duty chambers, who will then provide it
12 to your lawyer for signature. And, as I said, you will be
13 released on those conditions.

14 Further, Mr. Thao is ordered to comply with the
15 lawyers for the United States' directions with regard to his
16 booking and processing today.

17 All right. Let me now turn to Mr. Kueng.
18 Mr. Kueng, if you could go ahead and state your full name
19 for the record, please, and spell your last name.

20 DEFENDANT KUENG: Yes, Your Honor. J. Alexander
21 Kueng, K-u-e-n-g.

22 THE COURT: All right. And, Mr. Kueng, you can
23 see we have a court reporter here, and I am going to ask you
24 just to speak up a little bit going forward so I can make
25 sure that she can hear you. Okay?

1 DEFENDANT KUENG: No problem, Your Honor.

2 THE COURT: Perfect. Thank you.

3 All right. Can you please state your age.

4 DEFENDANT KUENG: 27.

5 THE COURT: Okay. Thank you, Mr. Kueng. Now, did
6 you hear me advise you of all of those rights a few minutes
7 ago?

8 DEFENDANT KUENG: I did, Your Honor.

9 THE COURT: And do you understand them?

10 DEFENDANT KUENG: I do, Your Honor.

11 THE COURT: Do you understand that you can claim
12 them at any time?

13 DEFENDANT KUENG: I understand, Your Honor.

14 THE COURT: All right. Thank you, Mr. Kueng.

15 Now, you are here because a grand jury has returned an
16 Indictment against you dated May 6th of 2021. Do you
17 understand the charges that you face in that Indictment?

18 DEFENDANT KUENG: I do, Your Honor.

19 THE COURT: All right. And I see that you are
20 here today with Mr. Plunkett. As I said, if you cannot
21 afford an attorney in this case, the Court would appoint one
22 to represent you because you are entitled to an attorney.

23 Do you wish to continue with Mr. Plunkett's
24 representation or would you like the Court to consider
25 appointing the Federal Defender to represent you?

1 DEFENDANT KUENG: I wish to continue with
2 Mr. Plunkett, Your Honor.

3 THE COURT: Okay. Thank you.

4 Let me just check in with Mr. Folk. Mr. Folk, is
5 the United States seeking detention of Mr. Kueng?

6 MR. FOLK: No. Thank you, Your Honor. We again
7 agree with the conditions in the Pretrial Services report.
8 Thank you.

9 THE COURT: Okay. Thank you, Mr. Folk.

10 Mr. Plunkett [sic], the conditions that Pretrial
11 Services has proposed are the same as those I just provided
12 for Mr. Thao. I do find that those conditions will
13 reasonably assure both your appearance at future proceedings
14 and the safety of the community if you are released on those
15 conditions.

16 Would you like me to go through those conditions
17 again for you, Mr. Kueng, or were you able to hear and
18 process them when I went through them the first time?

19 THE DEFENDANT: I was able to hear and process
20 them the first time, Your Honor. Thank you.

21 THE COURT: Okay. Thank you, Mr. Kueng. And you
22 will also be provided those conditions in writing after this
23 hearing.

24 I do want to again remind you that if you do not
25 comply with your conditions, there could be serious

1 penalties and sanctions, including revocation of your
2 release and bond, imprisonment, or a fine. Do you
3 understand that, sir?

4 DEFENDANT KUENG: I do, Your Honor.

5 THE COURT: Okay. So that paperwork I will
6 execute after this hearing, and it will be provided to your
7 lawyer for you to complete and execute as well.

8 In addition, Mr. Kueng is ordered to comply with
9 the lawyers for the United States' directions for his
10 booking and processing today.

11 All right. And then, Mr. Lane, if you could
12 please state your full name for the record and spell your
13 last name.

14 DEFENDANT LANE: Yes, Your Honor. It's Thomas
15 Kiernan Lane, T-h-o-m-a-s, K-i-e-r-n-a-n, last name Lane,
16 L-a-n-e.

17 THE COURT: Okay. Thank you, Mr. Lane. And how
18 old are you?

19 DEFENDANT LANE: I am 38 years old.

20 THE COURT: All right. And were you able to hear
21 me when I was advising all of the defendants of their
22 rights?

23 DEFENDANT LANE: Yes, Your Honor.

24 THE COURT: Okay. And do you understand your
25 rights, Mr. Lane?

1 DEFENDANT LANE: I do.

2 THE COURT: And do you understand that you can
3 claim them at any time?

4 DEFENDANT LANE: Yes, Your Honor.

5 THE COURT: Okay. Now, you are here today because
6 a grand jury has returned an Indictment against you dated
7 May 6th of 2021. Do you understand the charges that you
8 face in that Indictment?

9 DEFENDANT LANE: I do, Your Honor.

10 THE COURT: All right. Thank you, Mr. Lane. Then
11 let me turn to the topic of your legal representation. As I
12 have advised you and the other defendants, Mr. Thao and
13 Mr. Kueng, you, of course, are entitled to an attorney to
14 represent you in this matter. If you cannot afford one, the
15 Court will appoint one to represent you at no cost to you.

16 I see you are represented by Mr. Gray today. Do
17 you want to continue with Mr. Gray's services or would you
18 like the Court to consider appointing the Federal Defender?

19 DEFENDANT LANE: I will stay with Mr. Gray, Your
20 Honor.

21 THE COURT: Okay. Thank you.

22 All right. Let me just check in with Mr. Folk
23 with regard to the issue of detention. Is the government
24 seeking detention of Mr. Lane pending further proceedings?

25 MR. FOLK: No, Your Honor. Again we will agree to

1 the conditions in the Pretrial Services report.

2 THE COURT: Okay. Thank you.

3 Mr. Lane, do you want me to go through the
4 conditions that were proposed? They are the same as those
5 for Mr. Thao and Mr. Kueng. I am happy to go through them,
6 but if you think you heard them the first time, I can --

7 THE DEFENDANT: I think I understand them. Thank
8 you, Your Honor.

9 THE COURT: Okay. All right. Thank you,
10 Mr. Lane. So I do find that the conditions that have been
11 proposed by Pretrial Services, including the execution of a
12 \$25,000 unsecured bond and submission to the Pretrial
13 Services interview on or before May 11th, in addition to the
14 other conditions, will reasonably assure Mr. Lane's
15 appearance as required at future proceedings and the safety
16 of the community and I will order all three of the
17 defendants released on the same conditions.

18 Mr. Lane, I do want to check in and make sure that
19 you understand if you violate those conditions, there could
20 be very serious penalties and sanctions, including
21 revocation of the bond and release, imprisonment, or a fine.
22 Do you understand that, Mr. Lane?

23 DEFENDANT LANE: Absolutely, Your Honor.

24 THE COURT: Okay. All right. Thank you. And
25 then Mr. Lane is also ordered to comply with the directions

1 issued by the attorneys for the government for his booking
2 and processing today.

3 An order setting a schedule in this case will
4 issue in due course. I believe that covers everything for
5 this initial appearance, but I will check in with each of
6 the lawyers.

7 Mr. Folk, is there anything further for the United
8 States?

9 MR. FOLK: No. Thank you, Your Honor.

10 THE COURT: Okay. Thank you, Mr. Folk.

11 Mr. Paule, is there anything further for Mr. Thao?

12 MR. PAULE: No, Your Honor. Thank you.

13 THE COURT: Mr. Plunkett, is there anything
14 further for Mr. Kueng?

15 MR. PLUNKETT: Nothing further, Your Honor.

16 THE COURT: Okay. And then, finally, Mr. Gray, is
17 there anything further for Mr. Lane?

18 MR. GRAY: I just have a question. This is
19 CR-108, and CR-109 was also mentioned. We're only here on
20 CR-108, correct?

21 THE COURT: That's correct, Mr. Gray. Your client
22 is here on CR-108.

23 MR. GRAY: Okay. Is he indicted in 109 too or is
24 this the only --

25 THE COURT: No. Your client is indicted in CR-108

1 and is not indicted in CR-109.

2 MR. GRAY: All right. Thank you, Your Honor.
3 That's all.

4 THE COURT: You're welcome.

5 All right. Thank you all. We are in recess.

6 MR. PLUNKETT: Thank you, Your Honor.

7 MR. PAULE: Thank you, Your Honor.

8 (Court adjourned at 8:24 a.m.)

9 * * *

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11
12 I, Lori A. Simpson, certify that the foregoing is a
13 correct transcript from the record of proceedings in the
14 above-entitled matter.

15
16 Certified by: s/ Lori A. Simpson

17 Lori A. Simpson, RMR-CRR
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